IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1291 of 1999

in

SPECIAL CIVIL APPLICATIONNo 2480 of 1999

For Approval and Signature:

Hon'ble ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and
MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed : YES
   to see the judgements?

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy : NO
   of the judgement?

4. Whether this case involves a substantial question : NO

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of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

KAJALBEN G SINDHI

Versus

COMMISSIONER OF POLICE

Appearance:

MR HR PRAJAPATI for Appellant

MR JOSHI, ASSSTT.GOVERNMENT PLEADER for Respondent No. 1, 2, 3

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CORAM : ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and
MR.JUSTICE K.M.MEHTA

Date of decision: 11/10/1999

ORAL JUDGEMENT

Per Thakker, Actg. C.J.

This appeal is filed against dismissal of SCA No. 2480 of 1999 by the learned Single Judge on August 18, 1999.

The appellant was the original petitioner. In exercise of the powers under Section 3 of the Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "the Act"),the detenu was detained on January 10, 1999 by the Commissioner of Police, Ahmedabad stating therein that with a view to preventing him from acting in a manner prejudicial to maintenance of public order, he was required to be detained.

On the same day, grounds of detention were supplied to the detenu inter alia alleging therein that he can be termed as "bootlegger" as contemplated by Section 2 (b) of the Act. Against him, three cases were registered on April 23, 1998, May 7, 1998 and May 17,1998. It appears that two statements were also recorded on January 7, 1999 and January 8, 1999 respectively. The first witness stated that on December 1, 1998 at about 4 p.m., when he was at his residence, the detenu in the company of his associates came there and asked the witness to keep the liquor in his house. On refusal by the witness, the detenu got excited and attacked him. On the shout by the witness, a number of persons from the nearby locality came there but the detenu threatened them by point of knife stating that if they would come to rescue the witness, they would also be beaten. It resulted into panic in the nearby vicinity. Even tempo of life was also disturbed.

The second witness stated that on December 20, 1998, at about 8 a.m., he was passing from Chandrabhanu cinema. At that time, the detenu stopped him and alleged that he was police informer and was supplying information to the police regarding activities of the detenu.Detenu then started beating him and on shout by the witness, several persons assembled there , but they were also threatened by the detenu . Even tempo of life was disturbed. It also affected public order.

The detaining authority then stated in the grounds of detention that looking to the anti social activities of the detenu , it was not possible to take action in accordance with the provisions of the Bombay Police Act or under the Bombay Prohibition Act. As he was satisfied that with a view to preventing the detenu from continuing anti social activities, it was necessary to detain him, an order of detention was passed.

Before the learned Single Judge , it was urged by the learned counsel for the detenu that there was non application of mind on the part of the detaining authority in upholding privilege under sub-section (2) of

Section 9 of the Act and names and particulars of the witnesses were withheld from the detenu which had deprived the detenu of making effective representation which was violative of Article 22 (5) of the Constitution.

The learned Single Judge after perusing the affidavit in reply filed by the Additional Director General of Police (Law and Order) , Gujarat State, held that the privilege was rightly claimed by the detaining authority and exercise of power under sub-section (2) of Section 9 of the Act could not be said to be illegal and subjective satisfaction was not vitiated. Petition was, therefore, dismissed.

Before us, various contentions were raised by the learned counsel for the appellant. It was submitted that there was gross delay in passing the order of detention inasmuch as though the last registered case against the detenu was of May 1998, order of detention was passed as late as on January 10, 1999. Hence, there was no causal connection and live link between the activities of the detenu and the order of detention. It was submitted that the acts in question at the most can be said to have affected "law and order" and not "public order", and hence, the power of detention could not have been exercised by the detaining authority. It was stated that the detenu was in custody. It was,therefore, not necessary for the detaining authority to pass an order of detention. In substance and in reality, the order was punitive and not preventive. Though it was stated that detenu was in jail, there was non-application of mind on the part of the detaining authority in not considering the fact that even if the detenu made an application to enlarge him on bail, such prayer could be opposed by the detaining authority. Even if detenu would be enlarged on bail, appropriate action could be
taken for cancellation of bail.

Finally, it was urged that the privilege claimed by the detaining authority and upheld by the learned Single Judge was contrary to law laid down by the Supreme Court as well as by this Court. Hence, subjective satisfaction was vitiated as it was violative of Article 22 (5) of the Constitution.

In the facts and circumstances of the case, in our opinion, this LPA can be allolwed by upholding the last contention of the learned counsel for the appellant. It is clear that the last incident relating to cases registered against the detenu was of May 17, 1998.

Thereafter, there was substantial gap between the incident in question and recording of statements by the authorities. It may be recalled that two statements were recorded on January 7 and 8 , 1999. Unregistered incidents reflected in the statements of witnesses took place on December 1, 1998 and December 20, 1998. The detaining authority had verified the statements of both the witnesses. The detaining authority, however, had not stated anything regarding his satisfaction of withholding names and particulars of the witnesses from the detenu. It is no doubt true, as observed by the learned Single Judge, that both the witnesses have stated that if their names and particulars would be disclosed, there would be danger from the detenu. It is also stated in the affidavit in reply of the detaining authority that he was satisfied about the genuineness, correctness and veracity of the statements .

As observed by a Division Bench of this Court in Bai Amina vs. State of Gujarat. (1981) 22 GLR 1186, the mere fact that the relevant particulars and materials were furnished to the detaining authority in confidence by some person is not by itself. a sufficient ground for withholding the disclosure of such particulars and materials,if they have been relied upon against the detenu and their disclosure would assist the detenu in making effective representation against his detention. It was also observed that it was the satisfaction of the detaining authority himself that apprehension expressed by informant is honest, genuine and reasonable in the circumstances of the case. General background , character, antecedents, criminal tendency or propensity etc. of the detenu and such of those matters as are relevant in the context of the informant must be inquired into and carefully examined by the detaining authority with a view to satisfying itself that the alleged apprehension is not imaginary or fanciful or that it is not merely an empty excuse invented by the informant. Relying upon the decision of the Supreme Court in Ganga vs. State of Maharashtra, AIR 1980 SC 1744, the Division Bench observed that having regard to the seriousness of the question involved, the detaining authority would be well advised to make a contemporaneous record of the grounds and reasons which weighed with it in withholding the documents, statements, materials and particulars.

Law laid down in Bai Amina came to be confirmed by Full Bench of this Court in Chandrakant Patel vs. State, (1999) 1 GLR 761.

In the instant case, not only there is nothing in the

contemporaneous record with regard to formation of such opinion or satisfaction regarding withholding of names and material particulars by the detaining authority, but nothing is stated in the grounds of detention. On the contrary, in the affidavit in reply, in para 10, the detaining authority has stated that he was subjectively satisfied that if names and addresses and other particulars of the witnesses were disclosed to the detenu, their lives and properties would be in danger. It was further stated that witnesses were not coming forward to register any complaint because of fear and apprehension of insecurity to their lives and properties. Looking to the record, it appears that it was not stated by the witnesses themselves that there would be damage to their properties. It is also not stated by the detaining authority in the order or even in the grounds of detention and that ground was probably stated for the first time in the affidavit in reply.

In our opinion, therefore, the case is squarely covered by Bai Amina as affirmed by the Full Bench.

For the foregoing reasons, withholding of names and particulars of witnesses by the detaining authority had caused prejudice to the detenu as he was deprived of a right to make effective representation which is violative of Article 22 (5) of the Constitution and the order of detention deserves to be quashed and set aside.

LPA deserves to be allowed and is accordingly allowed. Order passed by the learned Single Judge is set aside. Order of detention is hereby quashed and the appellant-detenu is ordered to be released forthwith if his presence is not required in any other case. No costs.

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